

DOMESTIC SUPPORT OBLIGATIONS AND OTHER FAMILY LAW ISSUES

I. What is a Domestic Support Obligation?

- A.** Domestic Support Obligations are defined in section 101(14A) as a debt incurred under applicable non-bankruptcy law that is owed to:
 - a spouse, former, spouse, child, child's parent, legal guardian, or responsible relative
 - for alimony, maintenance or support
 - established by a separation agreement, divorce decree, property settlement agreement, court order, or determination under applicable non-bankruptcy law by a governmental unit
 - that accrues before, on or after the date of the order for relief
- B.** Domestic Support Obligations now include debt assigned to a governmental unit for collection purposes.
 - Prior to this change, the claim was not given priority status if it was assigned to another entity, voluntarily, by operation of law, or otherwise
 - non-voluntary assignments to nongovernmental entities are not considered to be Domestic Support Obligations
 - voluntary assignments to a nongovernmental entity are not Domestic Support Obligations unless the assignment is for the purpose of collecting the debt
- C.** Includes interest that accrues on the debt as provided by other non-bankruptcy law.
- D.** Need not be expressly designated as alimony, maintenance, or support if it is in the nature of those obligations.

II. Claim Status of Domestic Support Obligations.

- A.** Under the new language to section 507, Domestic Support Obligations are entitled to first priority status without regard to whether the claim is filed by the person owed the debt, or a governmental unit to whom the debt is voluntarily assigned. § 507(a)(1).

--the priority applies to the amount owed “as of the date of the filing of the petition”

--the funds must be applied and distributed in accordance with applicable non-bankruptcy law

B. If the debt is non-voluntarily assigned to a governmental unit or owed directly to the governmental unit, the claim will be a first priority claim; however, the claim will be subject to the claims described in paragraph A above.

C. If a trustee is appointed under section 701, 1104, 1202 or 1302, the administrative expenses of the trustee in administering the assets are paid before the payment of the Domestic Support Obligation.

--this includes expenses allowed under paragraphs (1)(A), (2) and (6) of section 502(b) which are:

1. wages, salaries and commissions for services rendered after commencement of the case;
2. wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable for any period of time after commencement of the case as a result of violation of Federal or State law;
3. any tax incurred by the estate, whether secured or unsecured, including property taxes;
4. any fine, penalty, or reduction in credit relating to the type of taxes set forth above;
5. compensation and reimbursement awarded under section 330(a) for compensation of officers and professionals;
6. fees and mileage.

III. New Notice Requirements Relating to Domestic Support Obligations.

A. Under sections 704, 1106, 1202 and 1302 a trustee must provide the holder of a domestic support claim with notice as follows:

--of the claim and the right to use services of a State child support enforcement agency

--the name, address, and telephone number of the State agency

--an explanation of the rights of the holder under the appropriate bankruptcy Chapter

- B.** A trustee appointed under section 704, 1106, 1202 and 1302 must provide the State child support agency of a domestic support claim with notice as follows:

--the claim

--the named, address and telephone number of the claimant

- C.** Upon the entry of discharge, a trustee appointed under section 704, 1106, 1202 and 1302 must provide the holder of a domestic support claim with notice as follows:

--the granting of the discharge

--the last recent known address of the debtor

--the last recent known name and address of the debtor's employer

--the name of each creditor that holds a claim that is not discharged or was reaffirmed

- D.** A holder of a Domestic Support Claim or the State child support enforcement agency may request the last known address of the debtor from a creditor whose debt was not discharged or whose debt was reaffirmed. The creditor will not be liable for any reason for providing the address.

IV. Chapter 13.

- A.** A debtor must pay all amounts required to be paid under a domestic support obligation imposed by order or statute and that first become due and payable after the filing. Failure to make such payment is grounds for dismissal or conversion of the case. § 1307(c)(11).
- B.** In order to confirm a plan, the debtor must show that he/she is current on all post-petition domestic support payments.
- C.** A debtor's plan may provide for less than full payment of the priority claim set forth in 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a five (5) year period will be applied to make payments under the plan. The 507(a)(1)(B) priority covers Domestic Support Claims that are involuntarily assigned to a

governmental unit or are owed directly to the governmental unit.
§ 1322(a)(4).

- D.** In order to receive a discharge, the debtor must certify that all post-petition Domestic Support Obligations, (including payments on pre-petition obligations to the extent required by the plan) have been paid.
§ 1328(a).

V. The Automatic Stay.

- A.** The Automatic Stay does not apply to the following types of domestic relations/domestic support actions:
- child custody/visitation
 - marital dissolution (exempt property division)
 - regarding domestic violence
 - withholding of income that is property of the estate or the debtor for payment of Domestic Support Obligations
 - withholding or suspension of a driver's, professional, or occupational license as specified under the Social Security Act
 - reporting of overdue support obligations to a credit reporting agency by a parent as specified in the Social Security Act
 - interception of a tax refund in satisfaction of a Domestic Support Obligation
 - enforcement of a medical obligation as specified in the Social Security Act

VI. Discharge

- A.** Under 523(a)(15) the defenses have been removed. Those defenses allowed the debtor to show an inability to pay or allowed the debtor to show that after a benefit/detriment analysis the debt should be discharged.
- B.** It now appears that between 523(a)(5) and 523(a)(15) every type of obligation will be non-dischargeable to a spouse, former spouse or child of the debtor.

- C.** Those debts that are voluntarily assigned to a non-governmental entity, if assigned by a spouse, former spouse, child or responsible adult for a child, will not be discharged under 523(a)(5).
- D.** 523(a)(15) has been changed to provide that these types of debts are not discharged unless an action is brought.

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